

PROPOSED CHANGES TO THE RECYCLED CONTENT TRASH BAG REGULATIONS

(Redline indicates language proposed for the initial 45-day comment period)

(Underline indicates language proposed to be added in response to comments)

(Strikeout indicates language proposed to be deleted)

SECTION 17979.3 EXEMPTION FOR TRASH BAGS USING ADHESIVE, HEAT AFFIXED STRAPS; PETITION FOR VARIANCE

(a) This Article does not apply to plastic trash bags that use adhesive, heat-affixed straps attached to the bag during the manufacturing process if the manufacturer of the plastic trash bags manufactured bags of that type prior to January 1, 1995.

(b) The exemption provided for trash bags pursuant to subsection (a) shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1997, deletes or extends that date.

(c) Any manufacturer of plastic trash bags that are exempt from this Article pursuant to subsection (a) may petition for a variance pursuant to subsection (d) ~~prior to January 1, 1997, by a date specified by the board, which would become operative on January 1, 1997.~~

~~Subsection (d) shall become operative on January 1, 1997.~~

(d) Petition Procedure -

(1) Any manufacturer of plastic trash bags that received an exemption pursuant to subsection (a) may petition the board for a variance from the requirements of this Article for the manufacture of those bags.

(2) Upon receipt of a petition pursuant to subsection (c), the board shall do all of the following:

(A) Issue a public notice of the board's intent to hold a public hearing for purposes of considering the petition for a variance.

(B) Hold a public hearing to allow the petitioner, and any other interested parties, to comment on the petition for a variance. At the hearing, the board shall review, and enter into the record, any evidence presented that relates to the variance, including, but not limited to, any evidence that shows that the petitioner does or does not meet the requirements of this Article due to technological considerations.

To petition the Board for a variance, or to maintain a variance upon review by the Board pursuant to subsection (d)(2)(D), the petitioner must provide, under penalty of perjury, information for the regulated trash bags produced during the previous twelve (12) months, including, but not limited to: Following is a list of evidence the Board considers relevant in evaluating a petition in accordance with the criteria set out in subsection (e). If a petitioner believes any documentation in this list would constitute confidential, trade secret, or proprietary information, then the petitioner may submit alternative documentary evidence

1 which would enable the Board to evaluate the petition for variance in accordance with the
2 criteria set out in subsection (e). The petitioner is not restricted to presenting evidence or
3 testimony that specifically addresses one of the items listed below, however, the evidence
4 presented must relate to the variance.
5

- 6 1. Documentation demonstrating that the plastic trash bags that use adhesive, heat-
7 affixed straps attached during the manufacturing process were made by you the
8 petitioner prior to January 1, 1995.
9
- 10 2. Identification of ~~each type of regulated trash bag produced by the petitioner and the~~
11 ~~weight in tons represented by each, including the percentage of the total regulated~~
12 ~~trash bags represented by the trash bags for which you are seeking a variance is~~
13 ~~sought.~~ Samples of any trash bag manufactured with adhesive, heat-affixed straps
14 attached to the bag during the manufacturing process should be presented to the
15 Board.
16
- 17 3. A detailed explanation of the differences, including differences in the product and
18 the manufacturing process, between the trash bags for which ~~you are seeking a~~
19 ~~variance is sought~~ and the other regulated trash bags that the ~~petitioning company~~
20 ~~petitioner manufactures.~~
21
- 22 4. Independent test results, product specifications, a letter of certification, or other
23 documentation, demonstrating the technological considerations in attaching
24 adhesive, heat-affixed straps to trash bags containing RPPCM. Any corroborative
25 evidence regarding any RPPCM from each supplier whose RPPCM you the
26 petitioner rejected or refused to purchase and/or whose evidence regarding any
27 RPPCM you the petitioner felt could not be used in sufficient quantities to attain the
28 annual aggregate RPPCM use requirements.
29
- 30 5. ~~Describe the reasons~~ Evidence describing why you believe that you the petitioner
31 cannot attain the annual aggregate RPPCM use requirements—Include including
32 any other factors or evidence related to the criteria listed in subsection(e)—which you
33 believe contribute to your need to petition for a variance.
34

35 (C) If, after holding the public hearing, the board determines, based upon substantial
36 evidence in the record, that the variance should be granted, the board shall grant the
37 variance. The board may impose conditions on the variance that require the petitioner to
38 comply with some or all of the requirements of this Article, based upon the board's
39 determination of the ability of a petitioner to comply.
40

41 (D) The board shall review any variance granted pursuant to this section at least once
42 every two years to determine whether the variance should be maintained, modified, or
43 revoked. The board shall use the list of evidence and evaluation criteria listed in subsection
44 (d) and (e) in carrying out this review.
45

46 (E) The board may charge only those fees that are necessary and reasonable to cover
47 its costs in processing a petition for variance or review of a variance pursuant to this section.
48
49
50

1 (e) Evaluation Criteria
2

3 (1) ~~The Board shall consider the following factors in~~ In determining whether to grant, or
4 deny maintain, revoke, or modify a petition for variance, the Board shall weigh
5 evidence presented at the public hearing using the following criteria, including, but
6 not limited to:
7

8 (A) Whether the evidence presented demonstrates that the manufacturer petitioner
9 cannot, for technological or other reasons, meet the RPPCM annual aggregate use
10 requirements identified in Section 17979 of this Article, for the years in which the
11 variance is sought, either through existing manufacturing processes or by increasing
12 RPPCM use in any of its regulated products.
13

14 (B) Whether the evidence presented demonstrates that the manufacturer petitioner
15 cannot increase RPPCM use in any of its regulated products to meet the RPPCM
16 annual aggregate use requirements identified in Section 17979 of this Article,
17 manufactured adhesive, heat-affixed strap bags prior to January 1, 1995.
18

19 (C) Whether the evidence presented demonstrates that the manufacturer petitioner
20 cannot, for technological reasons, use sufficient quantities of RPPCM in its regulated
21 products to meet the RPPCM annual aggregate use requirements identified in
22 Section 17979 of this Article, attach adhesive, heat-affixed straps to trash bags
23 containing RPPCM.
24

25 (D) Whether the evidence presented demonstrates that the manufacturer petitioner
26 cannot adjust the manufacturing process to meet the RPPCM annual aggregate use
27 requirements for the years in which the variance is sought without a significant
28 adverse economic impact to meet the RPPCM annual aggregate use requirements
29 identified in Section 17979 of this Article.
30

31 (2) ~~The Board shall also consider testimony presented that indicates that indicating~~
32 what impact granting, maintaining, revoking, or modifying the variance may
33 negatively impact will have on waste diversion in California or the market for
34 RPPCM and/or regulated trash bags that contain RPPCM.
35

36 Note: Authority cited: Sections 40502, 42297 Public Resources Code.
37 Reference: Section 42298, Public Resources Code